

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 14220 of 1996

Order:

The petitioner joined the service of the respondents-A.P.S.R.T.C. as Conductor on 12.01.1973. On the ground that he unauthorizedly absented from duty, he was deemed to have resigned from service vide orders dated 21.12.1981. By virtue of the orders of this Court, the respondents-A.P.S.R.T.C. reinstated the petitioner into service, vide orders dated 11.10.1983. Again on the allegation that he failed to close the S.R., the then Depot Manager of Secunderabad Depot, namely Mr. Ramesh Chandra Babu, removed the petitioner from service vide orders dated 13.06.1990. The petitioner assailed the order of removal by raising an industrial dispute. Pursuant to the award, passed by the Labour Court, in the I.D., the petitioner was reinstated into service vide orders dated 06.09.1993 and was posted at Kushaiguda. While so, Mr. Ramesh Chandra Babu, who earlier removed the petitioner from service was posted as Depot Manager of Kushaiguda Depot.

It is the case of the petitioner that respondent No.1-Depot Manager, who is inimical to him, vide order dated 24.06.1994, had removed him from service on the ground of unauthorized absence, though he submitted leave applications in advance. Assailing the said removal order of respondent No.1, the petitioner filed appeal before respondent No.2-Senior Manager, who by order dated 31.05.1995, dismissed the same. Aggrieved thereby, the petitioner preferred review petition before respondent No.3-Regional Manager, who by order dated 31.05.1995, modified the order of removal to that of reinstatement into service, *inter alia* imposing some conditions. In pursuance of the said order, the petitioner having re-joined the service of the respondents-A.P.S.R.T.C., filed the present writ petition, *inter alia* assailing the order of removal passed by respondent No.1, as confirmed by respondent No.2 and modified by respondent No.3, contending that the same is biased, *mala fide*, illegal and arbitrary, and prays to quash the same and consequently to direct the respondents to pay all consequential benefits, which ensure upon reinstatement.

On behalf of the respondents-A.P.S.R.T.C., their Law Officer, filed a detailed counter-affidavit denying the allegations made by the petitioner in the writ petition. The learned Standing Counsel for the respondents-A.P.S.R.T.C. reiterating the counter averments submitted that there is no illegality or infirmity in the impugned order. He submitted that respondent No.3, had virtually confirmed the order of removal, passed by respondent No.1 and confirmed by respondent No.2, but having regard to the long service put in by the petitioner, on humanitarian grounds, ordered his reinstatement into service with certain conditions, and the petitioner having

accepted the conditions for reinstatement, now cannot be allowed to contend that the very order of removal is bad, and more so when such order of removal has been passed after conducting regular enquiry. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned counsel for the respondents-A.P.S.R.T.C.

A bare reading of the counter of the respondents, it would appear that the petitioner is a chronic absentee. Because of his unauthorized absence, the petitioner was deemed to have retired from service vide order dated 21.12.1981 of the respondents. Pursuant to the orders of this Court, he was reinstated into service vide orders dated 11.10.1983 of the respondents-A.P.S.R.T.C. While so, on the ground of non-closure of S.R., he was again removed from service by order dated 13.06.1990 of the Depot Manager, Secunderabad. Pursuant to the award passed by the Labour Court in I.D. No. 231 of 1991, he was reinstated into service on 06.09.1993. Thus, it is clear that the petitioner before the order of removal came to be passed by respondent No.1, was once removed from service and reinstated.

The petitioner, admittedly, absented himself from duties from 14.10.1993 to 28.10.1993. The petitioner to prove that his absence was not willful, produced Medical Certificate from the Nizamia Government Hospital, but the same was not accepted by the respondents-A.P.S.R.T.C. for as per Regulation 11(2) of the APSRTC Employees (Leave) Regulations, 1963, an employee of APSRTC, who falls sick, has to report to the APSRTC Hospital at Tarnaka, which he did not do. As the absence of the petitioner was unauthorized, a charge sheet dated 16.11.1993 was issued framing two charges - one for unauthorized absence and the other for violation of the above-mentioned Regulation. The petitioner, it is the case of the respondents-A.P.S.R.T.C., did not submit his explanation to the said charges. Therefore, the allegations stood unrebutted.

While so, it appears that the petitioner again went on leave. Though the petitioner applied leave for 90 days, it is the case of the respondents-A.P.S.R.T.C., that they had sanctioned only 15 days leave to the petitioner from 28.03.1994 to 11.04.1994, further making it clear to him that his leave would not be extended beyond the sanctioned period. Applying for leave is one thing and sanctioning the leave is one thing. Unless the leave applied for is sanctioned, one cannot claim legitimacy of the leave. Though petitioner applied for 90 days leave, he was granted only 15 days leave, and he cannot presume that his leave, was sanctioned for the period applied. As the petitioner was sanctioned leave only for 15 days, his absence from duty for the period thereafter, is certainly unauthorized. When it was made clear to the petitioner that he was sanctioned leave only for 15 days, the petitioner who applied for 90 days leave, should have at least made enquiries whether his leave for further period was sanctioned or not, but the petitioner did not make any such enquiries.

When there was no communication from the petitioner after the sanctioned period of leave expired, it appears from the counter that respondent No.1 initiated

disciplinary proceedings by issuing charge sheet dated 19.04.1994, which when sent to the address of the petitioner was returned unserved. Thereafter, it was kept on the Notice Board at the work place of the petitioner for a period of seven days, but the petitioner did not respond. Thereafter, respondent No.1 appointed an Enquiry Officer, who issued notice calling upon the petitioner to appear for the enquiry on 30.05.1994. The notice of enquiry also returned unserved, and in spite of exhibiting the same on the Notice Board, when the petitioner did not appear for the enquiry on the appointed day, the Enquiry Officer conducted the enquiry *ex parte* and submitted his report. As the petitioner did not appear for the enquiry, obviously the charges leveled against him stood un rebutted, and as such were declared proved. On the strength of the enquiry report, respondent No.1 issued notice dated 09.06.1994 to the petitioner to show cause as to why he should not be removed from service. Even the said notice returned unserved. As the petitioner neither responded to the notice nor submitted his explanation, respondent No.1 passed order dated 24.06.1994 removing the petitioner from service, which on appeal, was confirmed.

The petitioner not only absented himself from duties unauthorizedly, but also did not inform of his whereabouts. When a person proceeds on leave, the minimum that is expected from him is to furnish his leave address, so that he can be contacted in case of need or emergency. Inasmuch as the notices relating to the charge sheet, domestic enquiry and final order of removal, sent by the respondents-A.P.S.R.T.C. to the petitioner returned unserved, they should be deemed to have been served on the petitioner and presumed that the petitioner had the knowledge thereof. Therefore, no illegality or arbitrariness, can be attributed to the action of respondent No.1 in passing the order of removal against the petitioner.

Given the truant conduct of the petitioner, and having regard to the fact that he was already removed from service on two occasions and reinstated, he does not deserve any sympathy, warranting interference by this Court. In **Regional Manager, Rajasthan SRTC v. Sohan Lal**, the apex Court held that it is not within the normal jurisdiction of the superior courts to interfere with the quantum of sentence imposed by the disciplinary authority unless it is shown that the sentence imposed is wholly disproportionate to the misconduct proved. In **Karnataka Bank Ltd. v. A.L. Mohan Rao**, the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment.

In the case on hand, respondent No.3 though held that the petitioner does not deserve sympathy, yet keeping in view the long years of service put in by the petitioner, had taken a lenient view and modified the order of removal, as passed by respondent No.1 and confirmed by respondent No.2, to that of reinstatement into service with certain conditions, and no interference is called for therewith, more so when the petitioner has himself agreed to such conditions at the time of accepting the order of reinstatement.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 7th February, 2006.

KSR